



CHRIS ONSTAD (ON RECONSIDERATION)

187 IBLA 72

Decided January 28, 2016



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CHRIS ONSTAD (ON RECONSIDERATION)

IBLA 2015-52-1

Decided January 28, 2016

Motion for Reconsideration of the Board's May 12, 2015, Order, setting aside a November 13, 2014, Decision of the Arizona State Office, Bureau of Land Management declaring an unpatented mining claim forfeited and remanding the case for further action. AMC 411022.

Motion for reconsideration granted; Board's May 12, 2015, Order modified, and BLM's Nov. 13, 2014, decision reversed and remanded.

1. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

A request for a waiver of claim maintenance fees must include the original signatures of all of the claim owners of record or their authorized agents. The printed name of a sole mining claimant, manually affixed in ink, constitutes an original signature and satisfies the requirement that the claimant provide a contemporaneous certification of his qualification for a waiver.

APPEARANCES: Chris Onstad, Colby, Kansas, *pro se*; John L. Gaudio, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

The Arizona State Office, Bureau of Land Management (BLM), has filed a Motion for Reconsideration (Motion) of the Board's May 12, 2015, Order, in which we set aside and remanded a November 13, 2014, Decision of BLM that declared the Lyn's Folly unpatented mining claim (AMC411022) forfeited. For the following reasons, we grant the motion to reconsider our Order and, rather than set aside BLM's Decision, we now reverse it and remand the case to BLM for further action.

### BACKGROUND

The facts in this case are straightforward. In its decision, BLM declared the Lyn's Folly mining claim (AMC411022) forfeited for failure to pay the claim maintenance fee or to file an effective Maintenance Fee Payment Waiver Certification (Waiver Certification) on or before September 1, 2014, for the 2015 assessment year. Chris Onstad, the Appellant, filed a timely Waiver Certification for the Lyn's Folly claim. The Waiver Certification bore Appellant's printed name, manually affixed in ink, but not his signature. For this reason, BLM declared the claim forfeited.

In its Decision, BLM stated that "while some unintentional omissions on a waiver may be curable, those omissions which affect 'the heart of the certification process,' such as failure to file a contemporaneously signed certification of claimant's qualifications . . . goes to the heart of the waiver certification process and therefore is not curable." Decision at 2 (quoting *Thomas L. Carufel*, 155 IBLA 340, 345 (2001)). BLM deemed the absence of Appellant's signature to be "not curable."

The Board set aside BLM's Decision, stating:

[T]he Board has subsequently clarified that the failure to include in a Waiver Certification the original signatures of all owners of record is a curable defect subject to notice from BLM that they have 60 days in which to cure the defect. *E.g.*, *Art Anderson (On Reconsideration)*, 182 IBLA 27, 33 (2012), and cases cited. The claimant must within 60 days of receipt of written notification by BLM of the defect either cure the defect or pay the claim maintenance fee. 30 U.S.C. § 28f(d)(3) (2012); 43 C.F.R. § 3835.93. If the defect is not cured or the maintenance fee paid within the 60-day period, the claimant forfeits the affected mining claims. 43 C.F.R. § 3835.92(c).

Order, IBLA 2015-52 (May 12, 2015). We remanded the case to BLM with the directive "to provide Appellant with written notification that he/she has 60 days in which to cure the defect or pay the claim maintenance fee." *Id.*

In its Motion, BLM asserts that Onstad, as the sole mining claimant, was required to submit a Waiver Certification with his original signature, and that providing only his printed name was "the same as not providing a Waiver Certification." Motion at 3. BLM maintains that Onstad's submission of a Waiver Certification without his signature is not a curable defect. BLM argues: "[W]hile in *Carufel*, failing to provide *any* of the original signatures of multiple mining claimants by simply submitting a photocopy of the previous assessment year's Waiver Certification was *not* curable, in *Anderson*, submitting a timely Waiver Certification

with *some but not all* of the original signatures of multiple mining claimants was curable.” Motion at 3. BLM asserts that “unlike *Carufel* and *Anderson*, this case does not involve multiple mining claimants,” but “involves a sole mining claimant,” a “fact [that] should affect the outcome of the case.” *Id.* BLM argues as follows:

Providing a Waiver Certification without a sole mining claimant’s signature is the same as providing a Waiver Certification without any claimant’s signature. And as in *Carufel*, providing a Waiver Certification without any claimant’s signature is the same as not providing a Waiver Certification. Put another way, because the Appellant provided a Waiver Certification without any claimant’s signature, this case is more like *Carufel* than *Anderson*, which again involved a Waiver Certification containing some but not all the signatures of multiple claimants. Relying on *Anderson* in the Order indicates that this Board may have misinterpreted or misunderstood this material fact.

*Id.*

BLM cites to two previously issued non-published orders in which the Board decided that the failure of a Waiver Certification to bear the original signature of a sole mining claimant is not a curable defect: *Mike Ryan*, IBLA 2014-108 (Apr. 22, 2014), at 2, and *Travis Gardner*, IBLA 2014-71 (Feb. 27, 2014), at 2. In *Ryan*, BLM received a timely Waiver Certification for the 2014 assessment year, but it was a photocopy of the Waiver Certification for the 2013 assessment year. The Board found that “the Waiver Certification did not bear an original, contemporaneous signature of the claimant to make the required certification.” Order, IBLA 2014-108, at 2 (citing *Anderson (On Reconsideration)*, 182 IBLA at 33; *L.R. Church*, 155 IBLA 367, 372 (2001); *Carufel*, 155 IBLA at 345)). In *Gardner*, BLM received a timely Waiver Certification that did not contain the claimant’s signature. The Board agreed with BLM that “[t]he failure to provide a ‘contemporaneously signed certification of claimant’s qualifications’ to file a waiver constitutes a defect at ‘the heart of the certification process.’” Order, IBLA 2014-71, at 2. In neither *Ryan* nor *Gardner* was there a “‘contemporaneous certification of compliance with the regulatory requirements for a waiver as of the date payment was due . . . .’” *Anderson (On Reconsideration)*, 182 IBLA at 33 (quoting *L.R. Church*, 155 IBLA at 372).<sup>1</sup>

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<sup>1</sup> In *L.R. Church*, the sole claimant neglected to provide his signature on the Waiver Certification, but the Waiver Certification was accompanied by an Affidavit of Performance of Annual Work that he did sign. The Board found that the signature on the Affidavit satisfied the requirement for a “contemporaneous certification of compliance with the regulatory requirements for a waiver.” 155 IBLA at 372.

Accordingly, in both *Ryan* and *Gardner*, the Board affirmed BLM's decisions declaring the claims forfeited as a matter of law.

### ANALYSIS

[1] In our view, the Board's Order in *Mark and Susan Case*, IBLA 2014-1 (Apr. 22, 2014), is more instructive for purposes of resolving the question raised in BLM's Motion. In *Case*, BLM received a timely Waiver Certification for the 2013 assessment year that "appears to have been filled out manually in ink, and bears the names and addresses of the Cases." Order, IBLA 2014-1, at 2. The lines captioned "Owner's Signature" next to each of their name was blank. BLM declared the Cases' claims void because the Waiver Certification was not signed. On appeal, the Board reversed BLM's decision. The Board reviewed *Anderson*, *Church*, and *Carufel*, and stated that a "Waiver Certification [that] contains some, but not all, of the original signatures of co-claimants," is distinguished from one that "contains no original signatures." *Id.* However, the Board proceeded to discuss whether a printed name, manually affixed on the given date, qualifies as a written signature. In this regard, the Board stated:

The regulations define a signature as "a mark when the person making the same intended it as such." 43 C.F.R. § 1810.1(g). A signature need not be made manually or holographically unless it is specifically required by statute or regulation. *Liberty Petroleum Corp.*, 178 IBLA 121, 129 (2009) (quoting *Am. Energy Indep. Royalty*, 165 IBLA 255, 260 (2005)). In the past, regulations governing other matters have specified that signatures must appear, for example, in ink or manually affixed. *See id.* at 130 n.6; *Lynda Bagley Doye*, 65 IBLA 340, 341 (1982). The requirement of an original signature at 43 C.F.R. § 3835.10(b)(2) does not specify that the signature must be in ink, manually affixed, or in a cursive font.

*Id.* at 3. The Board held that "the printed names of the claimants, manually affixed in ink by the claimants, constitute original signatures and satisfy the requirement that they provide a contemporaneous certification of their qualification for a waiver." *Id.*

While Board orders are not binding precedent, we are persuaded that the legal analysis in *Case* should apply to Onstad's appeal. In our May 12, 2015, Order, we set aside BLM's decision and remanded the case for BLM to provide "Appellant with written notification that he/she has 60 days in which to cure the defect or pay the claim maintenance fee." Order, IBLA 2015-52, at 2. In light of our holding and reasoning in *Case*, we now modify our Order in *Onstad* and reverse BLM's decision. Onstad's printed name, manually affixed in ink, satisfies the requirement that he provide a contemporaneous certification of his qualification for a waiver. Thus, there

is no defect in his Waiver Certification that requires notification of an opportunity to cure.

The regulations governing appeals to this Board provide that we may reconsider our decision under “extraordinary circumstances.” 43 C.F.R. § 4.403(b). We hereby grant reconsideration of our May 12, 2015, Order, and reverse BLM’s decision declaring Onstad’s mining claim forfeited and remand the case to BLM for further action.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, we grant BLM’s Motion for Reconsideration, modify our May 12, 2015, Order, and reverse and remand BLM’s decision.

\_\_\_\_\_/s/\_\_\_\_\_  
James F. Roberts  
Administrative Judge

I concur:

\_\_\_\_\_/s/\_\_\_\_\_  
Eileen Jones  
Chief Administrative Judge